IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEALS No 766, 767 and 768 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HEIRS OF PARSHOTTAMDAS S PATEL

Versus

JAGDISHBHAI P PATEL

Appearance:

1. First Appeal No. 766 of 1991
   MR NK MAJMUDAR for Appellants No. 1-2
   MR YATIN SONI for Respondents No. 1,2,3
   MR JB PATEL for Respondent No. 2
2. First Appeal No. 767 of 1991
   MR NK MAJMUDAR for Appellants No. 1-2
   MR YATIN SONI for Respondents No. 1-3
3. First Appeal No. 768 of 1991
   MR NK MAJMUDAR for Appellants No. 1-2
   MR YATIN SONI for Respondents No. 1-3

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 09/07/2003

COMMON ORAL JUDGEMENT

1. These three first appeals under Section 96 of the Code of Civil Procedure are directed against the common judgment and decrees dated 27th March, 1991 passed by the learned Judge, Court No.3, City Civil Court in Regular Civil Suits No.1448 of 1987, 1271 of 1987 and 1272 of 1987 whereby the learned Judge decreed the said suits.

2. The parties were the same in all the cases. The suits were consolidated and common evidence was led in Civil Suit No.1448 of 1987. I shall refer to the parties as they were arrayed in Civil Suit No.1448 of 1987.

3. The defendant no.1 Purushottamdas Shankerlal Patel was the father. He had four sons - Jagdishbhai Purushottamdas Patel - the plaintiff, Bachubhai Purushottamdas Patel - defendant no.2, Dipakbhai Purushottamdas Patel - defendant no.3 and Vinodbhai Purushottamdas Patel - defendant no.4.

4. The subject matter of the dispute in the present litigation is the Bungalow No.C/95 situated in Swastik Co-operative Housing Society, Navrangpura, Ahmedabad.

5. The plaintiff filed Civil Suit No.1448 of 1987 alleging that the suit property was of the co-ownership of the plaintiff and the defendants no.1 to 4 and that each owner had undivided one-fifth share in the property. In the records of the Society, the suit property was registered in the joint names of all the five persons. For the purpose of managing the affairs of the suit property, the defendant no.1 had obtained, from the plaintiff and the defendants no.2,3 and 4, the power of attorney on 4th May, 1974 and the defendant no.1 used to decide which part of the suit property should be given to which person on rent. He was also collecting rent and managing the suit property for and on behalf of all the co-owners. According to the plaintiff, he was residing with his family in the suit bungalow and was in occupation of three rooms on the first floor and the cellar. The plaintiff alleged that the defendant no.1 was under the influence of defendant no.3 and was acting in accordance with his wishes and instructions. The plaintiff and the defendant no.4, therefore, thought it desirable to cancel the power of attorney and the plaintiff cancelled the same by a public notice given on 20th August, 1986. Thereafter, the plaintiff and the

defendant no.4 called upon the defendant no.1 to render accounts of the rent collected by him from 4th May, 1974. However, the defendant no.1 got irritated and, by his reply, claimed that he was the sole and absolute owner of the property. The plaintiff had, therefore, filed the suit for an account of the rent collected by the defendant no.1 and for his one-fifth share in the rent collected by him.

6. The defendant no.1, in his written statement, denied that the parties to the suit were co-owners of the suit property or that each one had one-fifth share in the property. He claimed that he was the sole and absolute owner of the plot as well as the superstructure standing thereon. His case was that he enrolled himself as a member of the Society from his own independent income and in the year 1946, he had constructed the ground floor. The first floor was built in 1951-52. According to him, he had paid the money for such construction out of his own independent income and had repaid, by instalments, the loan taken for such construction. He further said that the plaintiff and defendants no.2 to 4 represented to him that, having regard to the fact that the defendant no.1 had become old and with a view to ensuring that there may be no difficulty in succession in the event of his death and with a view to securing relief in payment of Estate Duty as well as relief in payment of income-tax, if the property was rented, the names of the plaintiff and defendants no.2 to 4 should be entered with a clear understanding that they will not be acquiring any right in the suit property or that they would not claim any share in the rent.

7. Previously, the plaintiff had filed Civil Suit No.1371 of 1987 seeking an injunction against the defendants no.1,2 and 3 to restrain them from dispossessing him from the cellar and three rooms on the first floor, which he claimed to be in possession of.

8. The defendant no.4 Vinodbhai Purushottamdas Patel, who supported the plaintiff, also filed Civil Suit No.1272 of 1987 claiming to be in possession of one garage situated on the ground floor and three rooms with balcony and toilet situated on the first floor in his capacity as the co-owner of the suit property and sought injunction to restrain the defendants in his suit from forcibly dispossessing him.

9. The two main issues in all the suits which the parties contested at the trial were as follows:-

(1) Does the plaintiff prove that the suit

bungalow is of co-ownership of the plaintiff and the defendants?

(2) Does the defendant no.1 prove that the suit bungalow is of his exclusive ownership?

10. At the trial, the plaintiff gave evidence at Exh.62. The defendant no.4, who was supporting the plaintiff, also gave evidence on behalf of the plaintiff at Exh.125. The plaintiff also examined a clerk of the Post & Telegraph Department to whom the property had been let on rent.

11. The defendant no.1, who was aged 88 years, also gave evidence at Exh.140. Four other witnesses were also examined on behalf of the defendant no.1. They were (1) Babubhai Motilal Dalal (Exh.146) who was the Secretary of the Society, (2) Dipakbhai Purushottamdas Patel - the defendant no.3 who supported the defendant no.1, (3) Himabhai Mangalbhai, who was the owner of the adjoining lands in village Narsanda where the defendant no.1's father owned agricultural lands and (4) Bharatkumar Chinubhai Banker who was a student in the Balmandir which was run by the defendant no.1.

12. Both parties also led considerable documentary evidence.

13. At the end of the trial, on appreciation of oral and documentary evidence on the record, the learned Judge held that the claim advanced by the defendant no.1 that the suit property was his self-acquired property and was constructed from his own independent means was established beyond any doubt. However, in view of the subsequent event after acquisition of the property by the defendant no.1, the learned Judge came to the conclusion that the defendant no.1 had voluntarily thrown the property into the common stock with the intention of abandoning all separate claims upon it and by the operation of doctrine of blending, the suit property will be a joint property. He, therefore, decided the two main issues against the defendant no.1 and decreed all the three suits in favour of the plaintiff.

14. The original defendants no.1 and 3 have, therefore, filed these three appeals.

15. First Appeal No.766 of 1991 is directed against the judgment in Civil Suit No.1448 of 1987, First Appeal No.767 of 1991 against the judgment in Civil Suit No.1271 of 1987 and First Appeal No.768 of 1991 against the

judgment and decree in Civil Suit No.1272 of 1987. The learned counsel Shri N.K. Majmudar appearing for the appellants in all the appeals and the learned counsel Shri Yatin Soni appearing for the respondents in all the appeals took me through the entire oral and documentary evidence on record and made their submissions.

16. The facts emerging from the evidence are as follows.

16.1 The defendant no.1 Purushottamdas Shankerlal Patel belonged to village Narsanda in District Kheda. He had no brother. He had three sisters but two had already died. He was born in the year 1904. He came to Ahmedabad in 1928. He had passed Vernacular final examination. He had no money when he came to Ahmedabad. He had started giving tuitions. He became a member of the society in 1939. The certificate dated 30th June, 1939 issued by the Swastik Co-operative Housing Society Ltd. shows that the defendant no.1 was a registered share holder of 10 shares, each of Rs.50/-, in the society. The register of members of the society for the year 1938 (Exh.56) shows that the defendant no.1 was the holder of plot no.95 and he had paid Rs.300/- towards share capital. The plaintiff had borrowed a loan of Rs.3,000/- from the Society for building a house on the plot. The Society had given him a passbook (Exh.149). The loan of Rs.3,000/- was taken from the Society on 3rd October, 1942. On 20th April, 1944, the defendant no.1 took a loan of Rs.10,000/- from one Prabhudas Chaturbhai under a mortgage deed (Exh.145). It was recited in the deed that Rs.3,000/- was to be repaid to the society and a sum of Rs.7,000/- was to be spent on completing the construction of the property upto ground floor. The repayment of Rs.3,000/- to the society was borne out by the entry of Rs.3,000/- made in the passbook on 1st May, 1944. The plaintiff also admitted that the ground floor was constructed in 1946. He also said that thereafter, it was let to Darbar of Varsoda State and the first floor was constructed from the rental income.

16.2 According to the plaintiff, the defendant no.1 had started serving as a teacher in a Balmandir after coming to Ahmedabad. The defendant no.2 was born in 1932, defendant no.3 in 1941, defendant no.4 in 1935 and the plaintiff was born in 1943. He also said that his grandfather had agricultural lands in Narsanda and that his grandfather used to send money to his father when the house was under construction. The defendant no.1 denied that he used to get money from his father though he admitted that his father used to give his lands for

cultivation on crop-share basis and used to get income. According to him, he was also giving tuitions. The learned counsel for the respondents submitted that the defendant no.1 had admitted that he had no income to purchase the land or build the house. However, the defendant no.1 had stated that Prabhudas Chaturbhai Patel had helped him and the said fact is borne out by the mortgage deed (Exh.145). The learned Judge observed in para 28 of the judgment that the lands owned by the father of the defendant no.1 in village Narsanda were either uncultivable or that it produced nothing more than Bajra and Kodri. That was evident from the extracts of the revenue records at Exhs.45 to 51 and 54. There is nothing on record to show that this agricultural land produce was more than sufficient to leave any surplus for construction of property at Ahmedabad. Sufficiency of joint family nucleus was, therefore, not established.

16.3 The learned Judge, after discussing the evidence in paragraphs 18 to 28 of the judgment on this point, came to the conclusion that initially the suit property was defendant no.1's self-acquired property and was constructed from his own independent means. I agree with the reasoning adopted by the learned Judge and see no reason to take a different view of the evidence on this point.

17. However, the matter does not end here. The learned Judge, in view of defendant no.1's subsequent dealings with the property, came to the conclusion that he had thrown the property into common stock and it became joint family property by operation of doctrine of blending.

18. On this issue, the plaintiff produced considerable documentary evidence. It appears that the defendant no.1 had filed objections to the assessment of rateable value fixed by the Corporation for the year 1973-74. It appears that the objections were heard on 29th March, 1974 and the certified copy of the order is at Exh.144. It refers to the fact that the property had been let to the trustees of Ankur school for running the school. However, it referred to the contention of the defendant no.1 that the property had been divided between himself and his four sons and four separate rent notes had been executed by the trustees and they were paying separate rent of Rs.400/- per month to each co-owner. The certificate dated 16th April, 1978 issued by the Society (Exh.34) shows that the bungalow in question stood in the names of the plaintiff and the defendants in the Society's record.

19. It is also beyond dispute that the plaintiff and the defendants no.2 to 4, who were his brothers, had executed the power of attorney in favour of the defendant no.1 on 4th May, 1974 authorising the defendant no.1 to let out the property and collect rent and otherwise manage the property. The certified copy of the order dated 11th July, 1983 passed by the Inquiry Officer, City Survey is produced at Exh.103 and it shows the plaintiff and the defendants as owners of the suit property. The Society has also issued another certificate on 18th January, 1980 (Exh.151) confirming that the property stood in the names of the plaintiff and the defendants in the record of the Society. It appears that in 1978, the property was let to the Post and Telegraph Department. The lease deed executed by the P & T Department is at Exh.93, in which the name of the lessor is shown as "Shri Purushottamdas S. Patel (P.Das & Sons)". The defendant no.1 had signed this lease deed for and on behalf of P.Das & Sons. In the letter (Exh.95) dated 12th June, 1978, which was signed by the defendant no.1 and addressed to the Superintending Engineer, P & T, it was mentioned that the suit property which had been let out to them stood in the names of five persons in the record of the Society and that the defendant no.1 looked after the management of the property as their constituted attorney and further that the rent be paid by five different cheques every month and in five different names as stated. In another letter (Exh.96) dated 10th October, 1978 it was stated in para 2 that the property which had been let out to P & T had been divided in five parts and, therefore, rent should be divided in five equal parts. It was further stated in that letter that the defendant no.1 had been given power of attorney by the co-owners for managing the affairs of the property, that earlier the property was let out in five different names by five different rent notes, that, in the tender form, he had applied for and on behalf of P.Das & Sons and, therefore, the rent cheque should be issued to P.Das & Co. In still another letter (Exh.97) dated 3rd November, 1978, it was stated that the property which had been let out to P & T ran in the names of his four sons and his name and that it was his practice to obtain five different rent notes in five different names whenever the property was let out to anyone. It was stated in this letter (Exh.97) that the Municipal Corporation as well as the Society had already treated the property as having been divided in this manner and that he was merely managing the affairs of the property by virtue of the power of attorney held by him. The power of attorney as well as rent notes and the municipal tax bills were also

forwarded alongwith that letter for perusal. It was further stated in this letter that he had no objection if the cheques were not given in different names, but on the basis of the power of attorney, the cheque issued in his name should bear the words "P.Das & Sons". He had already opened an account in the name of P.Das & Sons and, therefore, it was necessary that the cheque should be issued in his name with P.Das & Sons written thereon. The rent receipt given by the P & T Department (Exh.38) also shows the name of the landlord as "P.S.Patel & Parivar". The plaintiff also produced a certified copy of the register of members of the society from the Office of the City Survey where the list was produced in the course of the city survey held in 1983. In the said list, at Serial no.102, the plaintiff and all the four defendants are shown as occupier/members of the suit plot.

20. In view of the above evidence, the learned Judge applied the doctrine of blending and held that the suit property had been thrown by the defendant no.1 into common stock. The learned counsel for the appellants submitted that, according to the defendant no.1, he had got the names of his sons entered in the record of the Society at their instance with a view to saving income-tax and wealth-tax. The learned Judge, however, observed that the sons have not supported this statement made by him and, from the documentary evidence which has already been referred to, it cannot be said that the defendant no.1 was forced to throw the suit property into common stock. The learned Trial Judge has rightly held that the act of defendant no.1 of throwing the suit property into common stock was an unilateral act and a matter of individual volition. The learned counsel for the appellants also submitted that the doctrine of blending presupposes that there was ancestral property in existence. The learned Judge, however, has rightly observed that it was an admitted fact that there were several agricultural fields owned by the father of defendant no.1 in village Narsanda and there was no heir except defendant no.1 and those fields were obviously the ancestral property of the defendant no.1 and his sons and no division of this property had taken place till 1973 when the names of his sons were entered as co-owners. I agree with the reasons given by the learned Judge for holding that the defendant no.1, by his conduct in dealing with the property, had thrown the self-acquired property into the common stock and it became joint family property. In the case of Goli Eswariah vs. Commissioner of Gift Tax, Andhra Pradesh reported in AIR 1970 SC 1722, the Supreme Court observed, as follows, in para 6 of the

decision:

"As observed by this Court in Mallesappa Bandeppa Desai v. Desai Mallappa, (1961) 3 SCR 779 - (AIR 1961 SC 1268) that the doctrine of throwing into common stock inevitably postulates that the owner of a separate property is a coparcener who has an interest in the coparcenary property and desires to blend his separate property with the coparcenary property. The existence of a coparcenary is absolutely necessary before a coparcener can throw into the common stock his self acquired properties. The separate property of a member of a joint Hindu family may be impressed with the character of joint family property if it is voluntarily thrown by him into the common stock with the intention of abandoning his separate claim therein. The separate property of a Hindu ceases to be a separate property and acquires the characteristic of a joint family or ancestral property not by any physical mixing with his joint family or his ancestral property but by his own volition and intention by his waiving and surrendering his separate rights in it as separate property. The act by which the coparcener throws his separate property to the common stock is a unilateral act. There is no question of either the family rejecting or accepting it. By his individual volition he renounces his individual right in that property and treats it as a property of the family. No longer he declares his intention to treat his self acquired property as that of the joint family property, the property assumes the character of joint family property."

21. The learned Judge has rightly applied the doctrine of blending as set out above and held that the defendant no.1 had, by unilateral voluntary action, thrown the suit property into common stock.

22. The learned counsel for the appellants submitted that entries in the Society's record and tax records do not confer rights of ownership and that the property could not have been entered in the names of five persons in the Society's record without a registered deed. However, when there is blending of property, the transaction by which the property ceases to be a property of coparceners and becomes impressed with the character of the coparcenery property does not amount to a transfer and no registered deed is necessary.

23. It was also submitted that, subsequently in 1988, the names of the plaintiff and the defendants no.2 to 4 who were the sons were deleted from the record of the society. However, that was at the instance of defendant no.1 after the dispute arose. Once the property was thrown into the common stock and it became coparcenery property, it could not have been reconverted into self-acquired property by any unilateral act of the defendant no.1.

24. It was then submitted that there was no plea of blending of property in the plaint. However, the plaintiff claimed to be a co-owner of the property alongwith his father and his three brothers and the learned Judge was entitled to consider the legal effect and consequences of the defendant no.1's conduct and dealings with the property and come to the conclusion that the property had been blended with the joint family property.

25. The learned counsel for the appellants cited the decisions reported in AIR 1958 A.P. 147, AIR 1963 A.P. 476, AIR 1960 SC 335 and AIR 1961 SC 1268. However, they all turn on the application of doctrine of blending in the facts of each case and it is not necessary to make detailed references to them.

26. The result of the above discussion is that the learned Judge has rightly decided the two main issues in favour of the plaintiff and decreed the suits. The appeals, therefore, fail and are dismissed. No order as to costs.

(M.C. Patel, J.)

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